

E-Filing

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YAMAHA CORPORATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SEER SYSTEMS, INC., a California
corporation,

Plaintiff,

v.

YAMAHA CORPORATION, a Japanese
corporation,

Defendant.

Case No. C 06 07736 BZ

**STIPULATION AND ~~PROPOSED~~
ORDER (1) TO SET ASIDE CLERK'S
ENTRY OF DEFAULT UNDER FRCP
55(c), (2) FOR DEFENDANT TO WAIVE
SERVICE, (3) FOR PLAINTIFF TO
PROVIDE EXTENSION OF TIME FOR
DEFENDANT TO RESPOND, AND (4) TO
POSTPONE CASE MANAGEMENT
CONFERENCE**

1 WHEREAS, Plaintiff Seer Systems, Inc. ("Seer") filed the present lawsuit against
2 Defendant Yamaha Corporation ("Yamaha") on December 18, 2006;

3 WHEREAS, Seer contends it duly served Yamaha and thereafter requested its default be
4 entered pursuant to Fed. R. Civ. P. 55(a);

5 WHEREAS, Yamaha denies that service was duly effected upon it and additionally asserts
6 that good cause exists in any event to set aside said entry of default;

7 WHEREAS, the parties disagree as to whether proper service has been effected;

8 WHEREAS, the parties have agreed to enter this stipulation rather than expending judicial
9 resources and burdening the Court with their dispute;

10 WHEREAS, Seer has agreed to stipulate to this request to set aside the default against
11 Yamaha;

12 WHEREAS, Yamaha has agreed to waive its argument that proper service has not been
13 effected if the default is set aside;

14 WHEREAS, Yamaha has agreed to waive its argument that proper service was not timely
15 effected under Fed. R. Civ. P. 4(m) if the default is not set aside;

16 WHEREAS, Yamaha has agreed to waive service in exchange for an extension of time
17 consistent with the extension of time to respond provided to a foreign defendant under the terms
18 of Fed. R. Civ. P. 4(d)(3), and Seer has agreed to deem this stipulation a request thereto;

19 WHEREAS, Yamaha has agreed to respond to Seer's complaint on or before July 31,
20 2007, and thereby appear and waive any defenses based on lack of personal jurisdiction in this
21 district but otherwise expressly reserves all its rights;

22 WHEREAS, Seer has agreed to extend Yamaha an extension of time to respond consistent
23 with the above;

24 WHEREAS, the parties agree that the pending June 25, 2007 Case Management
25 Conference should be continued to August 27, 2007 or the next available date for the Court to
26 accommodate the due date for Yamaha's response to the complaint;

27 NOW, THEREFOR, IT IS HEREBY STIPULATED AND AGREED by and among the
28 Parties to this action, by and among their respective undersigned counsel, that:

1 1. The Clerk's Entry of Default against Yamaha on April 26, 2007 be set aside under
2 Fed. R. Civ. P. 55(c);

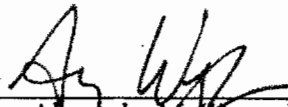
3 2. Yamaha waives service of the complaint in this action under Fed. R. Civ. P.
4 4(d)(3) and the parties deem this stipulation a request thereto effective May 2, 2007;

5 3. Yamaha shall have until July 31, 2007 to respond to Seer's complaint in this action
6 and otherwise hereby confirms its waivers as recited above; and

7 4. The pending Case Management Conference set for Monday, June 25, 2007 at 4:00
8 p.m., be continued to Monday, August 27, 2007 at 4:00 p.m. or the next available date for the
9 Court, with Case Management Statements filed in any event seven (7) days before the Case
10 Management Conference.

11
12 Dated: May 7, 2007

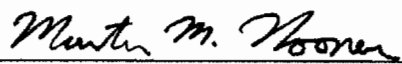
PETERSON, WEYAND AND MARTIN LLP

13
14 By: 
15 Alexander M. Weyand
16 Paul DeAngelis

17 Attorneys for Plaintiff
18 SEER SYSTEMS, INC.

19 Dated: May 7, 2007

20 MORRISON & FOERSTER LLP

21 By: 
22 Vincent J. Belusko
23 Martin M. Noonan
24 Brian F. McMahon

25 Attorneys for Defendant
26 YAMAHA CORPORATION
27
28

1 PURSUANT TO STIPULATION, AND GOOD CAUSE APPEARING UNDER
2 FED. R. CIV. P. 55(c), THE ENTRY OF DEFAULT OF YAMAHA BY THE CLERK OF
3 THIS COURT IS HEREBY SET ASIDE, AND THE MATTERS STIPULATED ABOVE
4 ARE SO ORDERED.

5 Dated: 10 May 2007

6 By: 

United States Magistrate Judge